

Ordinance 06-01C

RETURN TO COMMISSION

**AN ORDINANCE TO CONTROL COMMUNITY DECAY CAUSED BY
ACCUMULATION OF RUBBLE, DEBRIS, JUNK OR REFUSE; AND
ESTABLISHING PROCEDURES FOR ITS ENFORCEMENT**

WHEREAS, MCA section 7-5-2111, authorizes counties to adopt an ordinance to control, regulate and prohibit conditions that contribute to community decay on or adjacent to any public roadway; and

WHEREAS, the Cascade County Commissioners have previously established such an ordinance in 1985; and

Reel 177 - Doc. 797

WHEREAS, the Cascade County Commissioners amended this ordinance in 2003; and

R0070436

WHEREAS, the Cascade County Commissioners amended the ordinance in 2006; and

R00126203

WHEREAS, the Cascade County Commissioners amended the ordinance in 2007; and

R0156023

WHEREAS, the Cascade County Commissioners have determined there is a continuing need to control community decay in Cascade County; and

WHEREAS, the Cascade County Commissioners desire to amend the existing ordinance to clarify the Board's intent that the Agency is now the Cascade County Community Decay Program Director under the Cascade County Public Works Department and make other minor clarifications.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF CASCADE COUNTY, STATE OF MONTANA:

1. (a) "Agency" means the Cascade County Community Decay Program Director under the Cascade County Public Works Department.
- (b) "Community decay" as defined at MCA § 7-5-2110 means a public nuisance created by allowing rubble, debris, junk or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses or obstructive of free use of property as to interfere with the comfortable enjoyment of life or property. "Community decay" as used in this ordinance may not be construed or defined to apply to normal farming, ranching or other agricultural operations, or to a farm, ranch or other agricultural facility, or any appurtenances thereof, during the course of its normal operations.
- (c) "Person" means an individual, firm, partnership, company, associations, corporations, city or town, or any other group organized for profit or not.

R0235842 OR

Total Pages: 5 R 0.00 By: ldaggett 06/28/2011 11:11:18 AM
Cascade County, Rina Ft Moore - Clerk & Recorder



(d) “Public nuisance” is defined at MCA § 27-30-201 and means a nuisance which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted on such persons may be unequal.

(e) “Public view” is defined at MCA § 75-10-501(8) and, *for purposes of junk vehicles only*, as any point six feet above the surface of the center of any public road from which the community decay can be seen.

(f) “Shielding” is defined at MCA § 75-10-501(9) and, *for purposes of junk vehicles and metal items only*, refers to the fencing or other manmade barriers to conceal facility from public view. It also refers to natural barriers. Any shielding barrier must conform to all local zoning, planning, building, and protective covenant provisions. Any shielding is to be of sufficient height that none of the junk vehicles and/or metal are visible to public view. This is not intended to require that permanent building, other structures, utility poles or any farm buildings, ranch building, or other agricultural facilities or appurtenances are to be included in this and be shielded.

(g) “Tract of record” means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Cascade County Clerk and Recorder’s Office.

(h) “Violation” means community decay occurring on each tract of record which is on or adjacent to any public roadway.

(i) “Abatement” means physical removal of all community decay.

Duties of Private Property Owners

2. It shall be unlawful for any person who is an owner of property to allow rubble, debris, junk or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses or obstructive of free use of property as to interfere with the comfortable enjoyment of life or property and so constitute community decay on such property which is on or adjacent to any public roadway.

Powers and Duties of the Agency

3. The Agency has the following powers and duties:

(a) The duty to inspect when there has been a complaint by a member of the public that “community decay” is present on either public or private property which is on or adjacent to any public roadway.

- (b) The power to determine whether or not this ordinance applies after an inspection of the property.
- (c) The duty to serve a written notice of violation to the owner(s) of the property in violation of this ordinance.
- (d) The duty to initiate actions, through the County Attorney, in Court for the purpose of enforcing this ordinance and the power, upon obtaining a Court order, to enter upon the property for the specific purpose of abating the violation.
- (e) The duty to assess, upon order of the Court, the property owner for the actual costs of an abatement made by the Agency or by a third party on behalf of the Agency. Where the Agency is not capable of performing the abatement itself, the Agency shall obtain “quotes” and shall engage the party who submitted lowest “quote”.

Notification

- 4. (a) When the Agency receives a complaint from a member of the public, that a community decay violation may exist on either public or private property, the Agency shall inspect the property alleged to be in violation of this ordinance.
- (b) If there appears to be a violation of this ordinance, the Agency shall notify the property owner(s) in writing of the violation. This notice shall be sent by certified mail or by personal service as prescribed by Rule 4 of the Montana Rules of Civil Procedure. This notice shall include a statement specifically describing the violation. The notice shall also state that each violation of this Ordinance can subject the owner to a fine of up to \$500, pursuant to MCA § 7-5-109.
- (c) The notice of violation to the owner shall specify that the owner has thirty (30) days from receipt of such notice with which to become in compliance with this Ordinance. Compliance with the ordinance requires outright removal of all conditions which comprise the community decay, except that any junk vehicles or metal may be shielded.
- (d) The owner(s) may, after notification of violation, submit a plan of abatement to the Agency, which shall include: 1) The type of abatement and/or shielding; 2) the date for commencement of work; and 3) the reason why abatement cannot be completed within thirty (30) days. The Agency, in its sole discretion, may accept such plan and defer further Agency proceedings under this ordinance pending abatement or may file an action in Court against the owner for the purpose of enforcing this Ordinance.
- (e) After thirty (30) days after the notice of violation has been received by the owner(s) of the property in violation, the Agency shall determine whether the violation has been abated by the owner.

(f) If the Agency rejects the owner's plan of abatement or in the event the owner has failed to abate the nuisance within the thirty (30) days after the notice of violation has been received by the owner(s), the Agency, through the County Attorney, may file an action in Court against the owner for the purpose of enforcing this ordinance.

(g) After the Agency's complaint has been answered, a hearing will be held by the Court. Both the Agency and the owner may give evidence. At the end of the hearing, the Court shall determine if a violation of this Ordinance exists and, if the Court determines a violation exists and the owner cannot show cause why the violation has not been abated, the Agency shall move for an order from the Court allowing the Agency to enter upon the owner's property with the specific purpose of abating all conditions which comprise the community decay, except that any junk vehicles or metal may be shielded, as the Court deems appropriate, and shall impose a fine of up to \$500 per violation.

(h) The Agency may assess the property owner for the actual costs incurred by the Agency if the Agency is compelled to perform the abatement. If during the Agency's abatement action the Agency is able to dispose of items of value, any value received for such items shall be credited to the owner's assessed abatement costs.

(i) Nonpayment of the assessment by the Agency may be taken as a lien upon the property and is enforceable as are nonpayment of property taxes.

Jurisdictional Area

5. This ordinance applies to the whole of Cascade County with the exception of incorporated municipalities that have ordinance making powers

Effective Date

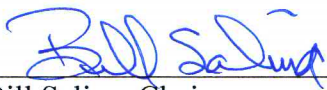
6. Pursuant to MCA § 7-5-105, this ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the Cascade County Commission.

Severability

7. If any provision of this ordinance is declared invalid by any court or tribunal, the remaining provisions of this ordinance shall not be affected thereby.

PASSED on first reading the 24th day of May 2011, by the Board of County Commissioners, Cascade County, State of Montana.

Ordinance 06-01C



Bill Salina, Chairman




Joe Briggs, Commissioner



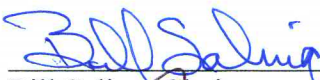
Jane Weber, Commissioner

Attest



Rina Fontana Moore, Cascade County Clerk and Recorder

PASSED on second and final reading the 14th day of JUNE, 2011,
by the Board of County Commissioners, Cascade County, State of Montana.



Bill Salina, Chairman




Joe Briggs, Commissioner



Jane Weber, Commissioner

Attest

June 28, 2011


Rina Fontana Moore, Cascade County Clerk and Recorder